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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Ms. MARIA UCHYTIL, on behalf of the
United States of America,

Plaintiff/Relator,

v.

AVANADE INC., a Washington corporation,
and AVANADE FEDERAL SERVICES, a
Delaware corporation.

Defendants.

Case No.

C12-2091 JCC

COMPLAINT

FILED UNDER SEAL

JURY TRIAL DEMANDED



12-CV-02091-CMP

Relator MARIA UCHYTIL brings this qui tam action in the name of the United States of America, by and through her undersigned attorneys Donald H. Mullins and Mark K. Davis, and alleges as follows:

I. PARTIES

1. Relator Maria Uchytal is a resident of the State of Alaska.
2. Defendant Avanafe Inc. is a Washington corporation registered to do business in the State of Washington.
3. Defendant Avanafe Federal Services is a Delaware corporation registered to do business in the State of Washington.

COMPLAINT - 1
Case No.:

BADGLEY ~ MULLINS

LAW GROUP
Columbia Center
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

NO Payment Received / NO sum. ISS.

- 1 4. Defendant Avanade Federal Services is wholly owned and operated by Avanade Inc.
- 2 5. Avanade's corporate headquarters are located at 818 Stewart Street, Suite 400,
- 3 Seattle, Washington 98101.
- 4 6. Avanade and Avanade Federal Services conduct business and accept correspondence
- 5 at offices located in Seattle, Washington.
- 6 7. Avanade and Avanade Federal Services may be served with process of this Court
- 7 through its registered agent: Mr. Doug Suttan, Avanade Inc., 818 Stewart St., Suite
- 8 400, Seattle, Washington, 98101.
- 9

10 II. JURISDICTION AND VENUE

- 11 8. This action arises under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*
- 12 9. This Court maintains subject matter jurisdiction over this action pursuant to 31 U.S.C.
- 13 § 3732(a) and 28 U.S.C. § 1331.
- 14 10. Venue is proper in this Court pursuant to 31 U.S.C. § 3732(a) and 31 U.S.C. §
- 15 3730(b)(1) because Defendants have minimum contacts with the United States
- 16 Government and have transacted business in the District of Columbia.
- 17 11. Before filing this complaint, Ms. Uchytel served a copy of the complaint upon the
- 18 United States, together with a written disclosure statement setting forth and enclosing
- 19 all material evidence and information she possesses, pursuant to the requirements of
- 20 31 U.S.C. § 3730(b)(2).
- 21
- 22 12. Ms. Uchytel has independent and personal knowledge, and is the original source of all
- 23 publicly disclosed information upon which any allegations herein might rest.
- 24 13. Ms. Uchytel has voluntarily provided all information in her possession to the United
- 25 States before filing this action including: (a) pricing sheets for CRM software, (b)
- 26

1 sole source notification letters to Avanade customers, (c) Task Management Tool
2 (TMT) Product Licensing and Implementation Tool, (d) Asset Purchase Agreement
3 dated April 23, 2012, (e) Project Raven Due Diligence Round Table Review dated
4 December 23, 2009, (f) Disclosure Schedules to Asset Purchase Agreement, (g) U.S.
5 License Agreement for Task Management Tool (TMT) v. 2.4, (h) Software and
6 Support Maintenance Agreement, (i) U.S. License Agreement CRM for
7 Accountability Management v. 1.0, and (j) Microsoft Master Subcontractor and Work
8 Order Amendment.
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10 **III. FACTUAL ALLEGATIONS**

- 11 14. Ms. Uchytel was employed by Avanade Federal Services from August 14, 2000, until
12 January 31, 2012.
- 13 15. During her employment, Ms. Uchytel served as the senior director of operations,
14 corporate secretary, director of contracts, facility security officer, and empowered
15 official for expert compliance matters.
- 16 16. In May 2010, Avanade acquired a company known as Ascentium.
- 17 17. One of the primary assets held by Ascentium at the time was a software tool known
18 as a Customer Relationship Management ("CRM") task management tool (herein
19 referred to as "TMT").
- 20 18. The TMT software tool was developed under federal contract with mixed use
21 funding.
- 22 19. Due to the mixed federal and contractor funding, the TMT software tool was
23 developed as a noncommercial product.
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- 1 20. Inforeliant obtained the prime contract with the federal government to develop the
2 TMT software tool.
- 3 21. Inforeliant then subcontracted the project to Microsoft.
- 4 22. In turn, Microsoft subcontracted the development of the TMT software tool to
5 Ascentium. Ascentium then developed the TMT tool pursuant to the terms of its
6 contracts with Microsoft and Inforeliant.
- 7 23. Ascentium worked to develop the TMT software tool as a noncommercial product to
8 be implemented in the government space. Specifically, the TMT software tool was
9 designed for implementation within the United States department of defense, the
10 United States Air Force, the United States Army, and the United States Navy.
- 11 24. The TMT software tool was designed to help military commands to assign, process,
12 and manage various internal tasks.
- 13 25. TMT is comprised of a collection of custom .NET and Web 2.0 extensions to
14 Microsoft Dynamics CRM 4.0.
- 15 26. TMT includes custom built tools, reports, scripts, and documentation for deployment
16 and support purposes.
- 17 27. For instance, the TMT software tool was designed to allow military commands to
18 balance workloads by delegating assignments, communicating with staff, and
19 tracking those assignments and communications.
- 20 28. TMT also employs standard authentication protocols to protect sensitive government
21 information.
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1 29. As a noncommercial product created with government funding, the United States
2 Government retained Government Purpose Rights to use and distribute the TMT
3 software tool.

4 30. During its acquisition of Ascentium, Avanade acknowledged multiple times that the
5 United States Government possessed intellectual property rights in the TMT software
6 tool.

7 31. After Avanade acquired Ascentium in May 2010, it sought to repurpose the TMT
8 software tool so that it could be licensed and sold as a commercial product to the
9 United States Government and other entities.

10 32. As part of this process, Avanade obtained written assurances from Microsoft that it
11 would not assert any licensing or proprietary rights in connection with the TMT tool.

12 33. After Avanade completed its acquisition of Ascentium, it began work to develop a
13 “clean room” version of the TMT software tool.

14 34. Avanade attempted to develop a “clean room” version of the software tool so it could
15 be advertised as a proprietary or “sole source” product.

16 35. Avanade wanted the software tool to be a proprietary product so that it could avoid
17 the competitive bidding process when dealing with the United States government.

18 36. Developing a clean room version of software free of intellectual property rights
19 restrictions is a time and labor intensive process.

20 37. Avanade estimated that the clean room process would take approximately two years.

21 38. As of the current date, Avanade has been unable to complete development of a clean
22 room version of the TMT software tool.
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1 39. In the December 2011 Asset Purchase Agreement between Avanade and Accenture
2 Federal Services, Avanade identified the creation date for the clean room software
3 (labeled "CRM Accountability Management") as "in progress."

4 40. Despite the incomplete status of the clean room version, Avanade began taking steps
5 to market and sell the TMT software tool as early as July 2010.

6 41. Avanade instructed Ms. Uchytel to begin productizing TMT as a commercial software
7 tool so that it could be sold and licensed to agencies within the United States
8 Government.

9 42. Shortly thereafter, Avanade began selling commercial TMT licenses to numerous
10 commands within the United States Navy, Air Force, Army, and other government
11 entities.

12 43. As part of her job duties, Ms. Uchytel was required to participate in this process.

13 44. For instance, Ms. Uchytel was required to send pricing sheets to potential purchasers
14 of the TMT software tool.

15 45. Avanade's pricing sheet included prices to purchase a Core User License or Edge
16 User License, as well as prices to install, maintain, troubleshoot, and repair the
17 software tool.

18 46. Ms. Uchytel was also required to respond to inquiries about the product and the
19 potential for competitive bidding.

20 47. Avanade's CEO, Mr. Howard Kilman, instructed Ms. Uchytel to respond to inquiries
21 with a form letter stating that Avanade was the sole developer of TMT and that TMT
22 remained proprietary to Avanade.
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1 48. Avande's TMT v. 2.4 license agreements also contained statements that TMT was a
2 proprietary software product owned wholly by Avande.

3 49. TMT v. 2.4 license agreements included a clause requiring government entities with
4 existing TMT licenses to agree to the termination of all rights they had in earlier
5 versions of TMT software.

6 50. Avande sold TMT v. 2.4 as a commercial product to U.S. military commands which
7 already possessed Government Purpose Rights in the software.

8 51. The military commands to which TMT v. 2.4 was sold include Air Force Reserve
9 Command (contract FA6643-11-F-0014, dated 8/19/2011), Special Operations
10 Command (contract FA4814-11-P-0158, dated 9/28/11), Air Force Global Strike
11 Command (contract FA4608-11-P-0064, dated 9/18/2011), United States Northern
12 Command (contract FA2517-11-T-6079, dated 9/26/2011), Air Force District of
13 Washington (contract FA7012-04-C-003/AVND201110050, dated 10/18/2010), U.S.
14 Air Forces in Europe (contract FA5613-10-F-8183/AVND201008117, dated
15 8/18/2010), U.S. Army in Europe (contract
16 GS00Q09BGD0030/GST0310DS8051/AVND201109058, dated 11/5/2011).

17 52. At all times relevant hereto, Avande knew that the TMT software tool was not a
18 proprietary or sole source product.

19 53. At all times relevant hereto, Avande knew that the TMT software tool had been
20 developed under a federal contract with taxpayer dollars.

21 54. At all times relevant hereto, Avande knew that the United States government
22 retained Government Purpose Rights to use the TMT software tool at its discretion.
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1 55. Despite knowledge of these facts, Avanade intentionally and falsely stated that the
2 TMT software tool was a proprietary and/or sole source product.

3 56. Avanade stated that the TMT software tool was a proprietary and/or sole source
4 product in order to avoid the competitive bidding process.

5 57. Avanade stated that the TMT software tool was a proprietary and/or sole source
6 product in order to inflate pricing for the product.

7 58. Avanade stated that the TMT software tool was a proprietary and/or sole source
8 product in order to avoid disclosure and/or discovery that the United States
9 government retained Government Purpose Rights to the product.
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11 59. By virtue of its intentional and false statements, Avanade sold and/or licensed the
12 TMT software tool to numerous agencies of the United States government under the
13 premise that it was a proprietary and/or sole source product.

14 60. As a result of these intentional and fraudulent acts, the United States government was
15 defrauded.

16 61. On multiple occasions, Ms. Uchytel sent communications to the United States
17 government as well as other vendors stating that the software tool TMT was a
18 proprietary sole source product.
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20 **IV. FIRST CAUSE OF ACTION**

21 **(VIOLATION OF THE FALSE CLAIMS ACT)**

22 62. The paragraphs above are re-alleged and incorporated by reference as though fully set
23 forth herein.

24 63. As described herein, Defendants, by and through its various officers, executives,
25 agents, representatives, and employees: (a) knowingly presented, or caused to be
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presented, to the United States Government, a false or fraudulent claim for payment or approval, (b) knowingly made, used, or caused to be made, a false record or statement to get a false or fraudulent claim paid or approved by the Government; and (c) knowingly made, used, or caused to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

64. Defendants authorized, ratified, and engaged in violations of the False Claims Act committed by its various officers, executives, agents, representatives, and employees.

65. As a direct and proximate result of Defendants' violations of the False Claims Act, the United States Government and the public have been damaged in amount to be proven at trial.

66. Ms. Uchytel requests a jury trial on all triable issues.

V. JURY DEMAND

67. Plaintiff hereby requests a jury of 12 persons to determine all issues of fact raised herein.

VI. PRAYER FOR RELIEF

Relator Ms. Uchytel, on behalf of herself and the United States Government, prays for the following relief:

68. For entry of judgment against the Defendants in an amount equal to three times the amount of damages the United States and the public have sustained as a result of the Defendants' violation of the False Claims Act.

69. For entry of judgment against the Defendants in the amount of \$10,000 for each violation of the False Claims Act as a civil penalty under 31 U.S.C. § 3729.

- 1 70. For an award in favor of Relator Ms. Uchtyl in an amount for bringing this action of
2 at least 15% but not more than 25% of the proceeds of the action.
- 3 71. For entry of judgment against the Defendants in an amount equal to all costs of this
4 action, with interest, incurred by Relator Ms. Uchtyl and the United States
5 Government under 31 U.S.C. § 3729.
- 6 72. For entry of judgment against the Defendants in an amount equal to all reasonable
7 attorneys' fees incurred by Ms. Uchtyl.
- 8 73. For entry of judgment against the Defendants in an amount equal to the pre-judgment
9 interest incurred by Ms. Uchtyl.
- 10 74. For a jury trial on all issues triable.
- 11 75. For all other relief in favor of Relator Ms. Uchtyl and the United States Government
12 that this Court may deem equitable or appropriate.
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15 DATED this 29 day of November, 2012.

16
17
18 BADGLEY MULLINS LAW GROUP PLLC

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COMPLAINT - 10
Case No.:

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